

13-282

TAX TYPE: REFUND REQUEST

TAX YEAR: 2010

DATE SIGNED: 7-22-2013

COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO

EXCUSED: D. DIXON

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 13-282</p> <p>Impound No.</p> <p>Tax Type: DUI Administrative Fee</p> <p>Tax Year: 2010</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, By Telephone

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General, By Telephone

RESPONDENT-1, Motor Vehicle Division

RESPONDENT-2, Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on June 3, 2013. Petitioner is requesting a refund of the administrative impound fee assessed when her vehicle was impounded following an arrest for driving under the influence.

APPLICABLE LAW

A refund of the DUI administrative fee shall be granted under Utah Code Ann. §41-6a-1406(6)(c), as follows:

The administrative impound fee assessed under Subsection (6)(a)(iv) shall be waived or refund by the State Tax Commission if the registered owner, lien holder, or owner's agent presents written evidence to the State Tax Commission that:

- (i) the Driver License Division determined that the arrested person's driver license should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter or other report from the Driver License Division presented

- within 30 days of the final notification from the Driver License Division; or
- (ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the stolen vehicle report presented within 30 days of the impoundment.

DISCUSSION

Petitioner requests a refund of the \$\$\$\$ DUI Administrative Impound fee that she was charged after her vehicle was impounded pursuant to Utah Code 41-6a-1406 when she was arrested for driving under the influence. Petitioner explained that before the arrest she had called police to her residence because of a theft and break-in. She had been working with the police and they did not think she was impaired. Later in the day she had needed to drive to STORE. She stated that she had been pretty sick the entire day of the arrest and the officer had determined she was driving under the influence and had arrested her. However, Driver License Division had made a determination to take no action against her license and on October 17, 2012, the Driver License Division had mailed a letter explaining that no action was being taken against her driving privilege. The letter also explained how she could request a refund of the \$\$\$\$ fee. Indicated in the letter was the information that she would need to request the refund within 30 days of the date of the letter.

The no action letter from the Driver License Division had been mailed to Petitioner at ADDRESS, CITY, UT ZIP CODE. This was her street address at the time. Petitioner, indicated however, that her mail was being stolen and she never received this letter. She stated that she had gotten a Post Office Box because her mail was being stolen. Petitioner was unclear as to when she had gotten the Post Office Box but thought that it was early in October. She stated at some time in October she went to the CITY-2 Motor Vehicle Office and gave them her post office box address. However, it was unclear whether she had given this address to the Driver License Division, or if the address change had actually occurred after the date the Driver License Division had mailed the letter. Additionally, Petitioner indicated that at some point she had called and spoken with someone at Motor Vehicles about the refund request and was told that she needed to wait until after the court proceeding. At the court proceeding she said she ended up taking a plea to a lesser charge and doing community service. She was not able to say when, or who she had spoken to at 'Motor Vehicles,' but from the information it was possible that this call had been made after the appeal period had already expired.

Petitioner also requested the refund based on financial hardship reasons. She indicated that she needed the money for a number of reasons and was in a dire financial situation.

It was Respondent's ("Motor Vehicle Division") position that it could not issue the refund because the Petitioner had failed to submit the request for refund within 30 days of the date of the letter from the Driver License Division. The Motor Vehicle Division points to Utah Code Sec. 414-6a-1406(6)(c) which provides the only criteria for refund. Pursuant to this section the refund could be issued if the vehicle was stolen or if the Driver License Division does not suspend or revoke the license and the refund request is made within the thirty-day period. There is no statutory provision that gives the Motor Vehicle Division or the State Tax Commission discretion to issue the refund for any other circumstances. Petitioner missed the thirty-day deadline. She did not provide sufficient, clear information to establish that she had changed her address with the Driver License Division to the post office box, prior to the October 17, 2012 letter being issued. Additionally, the Commission does not have the authority to issue this refund based on financial hardship. The request should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies Petitioner's request for a refund of the impound fee. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2013.

Appeal No. 13-282

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner